

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Communications Assistance for Law)	ET Docket No. 04-295
Enforcement Act and Broadband Access and)	
Services)	RM-10865

**COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION IN
SUPPORT OF THE UNITED STATES TELECOM ASSOCIATION PETITION FOR
RECONSIDERATION OF THE *CALEA APPLICABILITY ORDER***

The Telecommunications Industry Association (TIA) respectfully comments in support of the United States Telecom Association's Petition for Reconsideration¹ of the First Report and Order in the above-captioned proceeding.²

TIA is the leading trade association for the information and communications technology (ICT) industry, with 600 member companies that manufacture or supply the products and services used in global communications across all technology platforms. TIA represents its members on the full range of public policy issues affecting the ICT industry, owns and produces GLOBALCOMM™ – the next-generation global communications marketplace and summit, and is fully accredited by the American National Standards Institute (ANSI) to produce industry consensus standards, including ones that provide support for lawfully authorized electronic surveillance. As a result, as both a trade association and a standards development organization (SDO), TIA continues to play a critical role in industry's ongoing efforts to comply with the requirements of the Communications Assistance for Law Enforcement Act (CALEA).

¹ United States Telecom Association Petition for Reconsideration and for Clarification of the *CALEA Applicability Order*, ET Docket No. 04-295 (filed Nov. 14, 2005) ("*USTA Petition*"); FCC Public Notice DA-05-3153 (Dec. 7, 2005).

² First Report and Order and Further Notice of Proposed Rulemaking, FCC 05-153 (released Sep. 23, 2005) ("*First Report and Order*" and "*FNPRM*").

In the *First Report and Order*, the Commission imposed an 18-month deadline for providers of facilities-based broadband Internet access and interconnected VoIP services to the general public to come into compliance with its decision.³ The *First Report and Order* affirmatively answered the question of whether these publicly available services were subject to the requirements of CALEA. Importantly, however, the Commission indicated it would issue subsequent guidance on “important questions regarding the ability of broadband Internet access providers and VoIP providers to provide all of the capabilities that are required by section 103 of CALEA, including what those capability requirements mean in a broadband environment.”⁴ To date, the Commission has not released such an item.

In its comments in response to the Notice of Proposed Rulemaking in this proceeding, TIA urged the Commission to adopt reasonable implementation timelines for services the Commission subsequently determines are subject to the requirements of CALEA.⁵ TIA highlighted considerations of the industry standards process, market testing, and actual implementation by service providers. Specifically, TIA suggested that companies with currently existing technologies that would be newly subject to CALEA be given *18 months from the date of final rules* in the proceeding to achieve substantial compliance with those rules.⁶ After the 18 months elapses, any additional detailed requirements for call-identifying information would continue to be developed and implemented as provided by CALEA. For new technologies that in the future

³ Private network services not offered to the general public are still generally excluded.

⁴ *First Report and Order*, ¶ 46.

⁵ See Comments of the Telecommunications Industry Association, ET Docket No. 04-295 (Nov. 8, 2004) (“*TIA NPRM Comments*”) at 7-9.

⁶ *TIA NPRM Comments* at 8 (defining “substantial compliance” as “the achievement of sufficient wiretap capability so that criminals could not use the service without the content of their communications being subject to interception”).

become subject to CALEA under any “substantial replacement” test the Commission adopts, TIA suggested measuring the deadline for “substantial compliance” from the date on which the product was deemed to be a substantial replacement.⁷ Capturing a date reflective of when the technology actually is in widespread use, rather than initial deployment, would provide appropriate time for the standards process to function and promote the introduction into the market of innovative products and services.

At the time of its comment filing, however, TIA, or any other party for that matter, could not have expected the Commission to bifurcate its decision-making in this proceeding. The *First Report and Order* addresses only the general applicability of CALEA and lacks any meaningful specificity on what capability requirements are applicable or which party is responsible for each. As a result, industry is put in an untenable position of meeting an already very difficult implementation schedule while awaiting essential guidance on the many questions and issues that must be answered in order to move forward with meeting the obligations under the statute.

Because broadband and IP-based communications are quite different from traditional telecommunications in their functioning, many traditional forms of call identifying information may be inappropriate or simply unavailable to a particular service provider. As USTA observes in its Petition,⁸ the Commission itself, at the *NPRM* stage, acknowledged the many complicated issues that exist, such as the difficulties in isolating or even defining call-identifying information in broadband and IP networks, and where the responsibility for providing such information lies.⁹

⁷ *Id.* at 9.

⁸ *USTA Petition* at 2.

⁹ See Notice of Proposed Rulemaking and Declaratory Ruling, FCC 04-187 (released Aug. 9, 2004) (“*NPRM*”), at ¶ 68.

TIA does not advocate, and indeed would oppose, the Commission adopting specific technology solutions for compliance, and appreciates the Commission's acknowledgment that CALEA reserves that task for industry standards processes. Nonetheless, the *First Report and Order* does not include necessary meaningful information regarding *what* capabilities industry should standardize. With guidance "in hand" from the order the Commission promised as forthcoming, standards development organizations such as TIA would be much more effective in addressing *how* compliance is achieved.

TIA therefore urges the Commission to grant the USTA Petition for Reconsideration and refrain from imposing a compliance deadline of 18 months from November 14, 2005. The Commission instead should indicate any new reasonable deadlines only once it acts to provide industry and law enforcement further information on the scope of the capability requirements resulting from its decision in the *First Report and Order* to extend CALEA applicability to broadband Internet access and interconnected VoIP providers.

Respectfully submitted,

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